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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,150	03/26/2004	Shelley A. DiGirolamo		8371

7590 01/12/2005
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EXAMINER

SALDANO, LISA M

ART UNIT PAPER NUMBER

3673

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/810,150	DIGIROLAMO, SHELLEY A.	
	Examiner	Art Unit	
	Lisa M. Saldano	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/20/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it contains form and legal phraseology often used in patent claims, specifically is contains "means." Correction is required. See MPEP § 608.01(b).

Claim Objections

3. Claims 6 and 7 are objected to because of the following informalities:

Regarding claim 6, line 1, the applicant has made the claim depend from claim 7. Furthermore, the claim recites limitation directed to "the different characteristics." Prior claim language from which the claim depends does not mention "different characteristics. It appears that the applicant intended for the claim to depend from claim 5. Please clarify.

Regarding claim 7, the applicant recites limitations directed to "the outer layers" and "the inner layers." However, prior claim language from which this claim depends does not make prior mention of inner and outer layers. Please clarify.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Beier (4,756,035).

Regarding claims 1-4, Beier discloses an orthopedic pillow comprising a cover assembly 20 with substantially identical portions that are secured around the peripheries except for one (see Fig.4). Beier discloses a zipper 14 that provides means for selective opening of the cover. Beier discloses two chambers or compartments separated by straps 28, which function as baffles. Beier further discloses insertable filling 34, 114, 116 inside the cover assembly. Beier further discloses one core member 48 constructed to be insertable into and removable from the compartment for selectively changing characteristics of the pillow. Specifically regarding claim 4, the fillings 34, 48 extend substantially the entire length of the pillow.

Regarding claims 5, 6 and 9, Beier discloses that the insertable fillings in the core 48 may comprise four removable segments 54, 56, 58 and 60 that may comprise material of various rigidity, which inherently comprises a difference in fill weight (see column 2, line 67 to column 3, lines 4). Beier recommends that the fill comprise a urethane foam, which is synthetic material.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beier as applied to claims 1 and 3 above, and further in view of Graebe (6,189,168).

Beier discloses the inventions as described above.

However, Beier fails to explicitly disclose the use of cotton, polyester and feathers.

Graebe discloses a pillow 10 comprising a covering 12 made from two layers 16,18 of batting 28 and two layers of fabric 30A. Graebe discloses that the fabric may comprise cotton and spandex fibers (see column 4, lines 33-35). Graebe also discloses that the batting may comprise polyester fiber (see column 4, lines 1-5). Graebe further discloses that pillow are in their simplest forms constructed from materials including goose down (see column 1, lines 20-27).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Beier to comprise materials such as cotton, polyester and feathers, as taught and suggested by Graebe because such materials are commonly used in the art for the purpose of filling and covering pillows.

Art Unit: 3673

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Masuda (5,819,347) and Pistay (5,344,437) are pertinent to the present application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lms


HEATHER SHACKELFORD
SUPERVISORY PATENT EXAMINER
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